

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

May 13, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**IN RE: UNITED CITIES GAS COMPANY, a division of ATMOS ENERGY
CORPORATION INCENTIVE PLAN ACCOUNT (IPA) AUDIT UNITED
CITIES GAS COMPANY, a division of ATMOS ENERGY
CORPORATION, PETITION TO AMEND THE PERFORMANCE
BASED RATEMAKING MECHANISM RIDER
CONSOLIDATED DOCKET NOS: 01-00704 and 02-00850**

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Motion For Relief Under Rule 37.02 Of The Tennessee Rules Of Civil Procedure. Please file same in this docket. Copies are being sent to all parties of record.

Should you have any questions, please contact me at 615-741-3533. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Phillips".

Timothy Phillips
Assistant Attorney General

CC: All Parties of Record.

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
UNITED CITIES GAS COMPANY,)	
a Division of ATMOS ENERGY)	
CORPORATION INCENTIVE PLAN)	
ACCOUNT (IPA) AUDIT)	CONSOLIDATED DOCKET NOS.
)	01-00704 and 02-00850
UNITED CITIES GAS COMPANY,)	
a Division of ATMOS ENERGY)	
CORPORATION, PETITION)	
TO AMEND THE PERFORMANCE)	
BASED RATEMAKING)	
MECHANISM RIDER)	

**CONSUMER ADVOCATE’S MOTION FOR RELIEF UNDER RULE 37.02 OF THE
TENNESSEE RULES OF CIVIL PROCEDURE**

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to Rule 37.02 of the Tennessee Rules of Civil Procedure and the Hearing Officer’s ruling of May 10, 2004, and hereby respectfully requests further relief against Atmos Energy Corporation (“AEC”) and the TRA Staff as the Hearing Officer may deem appropriate.

The Consumer Advocate is in receipt of the responses of AEC and the TRA Staff to its Motion to Compel. In the Response, AEC and the TRA Staff clearly indicate their intent to disregard, through misdirection, the clear directives of the Hearing Officer and will not respond adequately to discovery properly propounded and that is the subject of rulings directing AEC and

the TRA Staff to respond.

AEC apparently is under the impression that further action on the part of the Consumer Advocate is necessary to compel AEC to carry out a direct order of the Hearing Officer. This is not the case. AEC and the TRA Staff are clearly under the obligation to describe the standard the TRA should apply to determine if AEC's and the TRA Staff's Motion to Consolidate and to Approve Settlement Agreement should be granted. As indicated in the Motion To Compel filed May 12, 2004, by the Consumer Advocate, AEC and the TRA Staff have not satisfied the directives of the Hearing Officer.

AEC's filing today restates at unnumbered page 3 it's position that:

"The Company has stated repeatedly that the grounds for the motion are contained in the motion and the accompanying exhibits."

The Consumer Advocate wants to make it's position clear. The only grounds cited in the motion for approval of the settlement are insufficient. The motion should be summarily denied given AEC and the TRA Staff's refusal to adequately respond to the Hearing Officer's ruling of May 10, 2004.

The Consumer Advocate understands the parties listing facts to support the motion. However, the discovery rules allow parties to explore the contentions and positions of the other parties through requests designed to discover any facts upon which another party relies to support those positions.

The TRA Staff clearly indicates it's refusal to follow the Hearing Officer's directives at page 5 of the TRA Staff's Response To The Motion To Compel. The TRA Staff declares that: "to the extent there is a separate standard governing motions to approve settlement agreements, there can only be one such standard. If such a separate standard exists, identifying that standard at this point in the proceeding will do nothing to lead to the discovery of additional admissible evidence in this

proceeding.” Any submission of additional objections to the discovery is untimely.¹ More importantly, the Hearing Officer’s ruling should not be ignored by either party. AEC and the TRA Staff filed a joint motion for approval of the proposed Settlement Agreement. AEC and the TRA Staff were directed to respond in like manner. We are beyond rearguing this issue.

AEC and the TRA Staff recognize in their Responses that the Hearing Officer directed them to provide the applicable standard. AEC and the TRA Staff have not done so. Instead, AEC and the TRA Staff reference alternative standards, one specific for review of a new tariff and one general but undefined standard for approval of settlements.

Consequently, the Consumer Advocate requests that the hearing officer rule as follows:

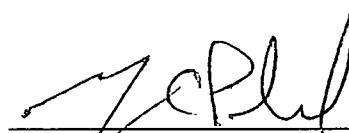
1. AEC and the TRA Staff must promptly answer the discovery requests, including a clearly articulated standard for review of the Motion For Approval Of The Settlement Agreement, in question;
2. In order to cure the prejudice to the Consumer Advocate caused by AEC and the TRA Staff’s failure to affirm (or specifically distinguish) the standard set out in its motion requesting that the proposed settlement be approved, the Hearing Officer should modify the scheduling to allow the Consumer Advocate to file a reply (no later than on May 28, 2004 at the close of business) to the parties responses to the Consumer Advocate’s objection to the proposed settlement.; and
3. The Hearing Officer should reserve questions about further relief, including sanctions.

¹ The TRA Staff’s approach to the Consumer Advocate’s motion to compel conveniently ignores an entire section of the Consumer Advocate’s pleading where the standard for granting the motion is discussed

FOR THE STATE OF TENNESSEE:



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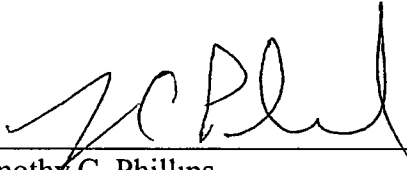
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail, facsimile or hand delivery on May 13, 2004

Honorable Deborah Taylor Tate
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